MICHIGAN SUPREME COURT

Office of Public Information

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FOR IMMEDIATE RELEASE **November 27, 2001**

MICHIGAN SUPREME COURT TO HEAR SEVEN CASES NEXT WEEK

Protecting child witnesses, home insurance coverage for a shooting death, and the right to a fair trial are among the issues the Michigan Supreme Court will consider in oral arguments next week.

Court will be held **Tuesday, December 4 and Wednesday, December 5, 2001** in the Supreme Court Room on the second floor of the G. Mennen Williams (a/k/a Law) Building. Court will convene at **9:30 am** each day.

(**Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys**.)

Tuesday, Dec. 4

PEOPLE v. KRUEGER
Prosecutor: Aaron J. Mead (616) 983-7111
Attorney for defendant: Steven L. Wolfram (616) 463-3335
At issue: Where the defendant was charged with sexually assaulting his four-year-old daughter, were his constitutional rights violated when the trial judge excluded him from the courtroom – after the child indicated that she was afraid to testify with the defendant in the room?
Background: Four-year-old Bradie Krueger told her babysitter that Bradie's sister's boyfriend got in the shower with Bradie and sexually molested her. Later, Bradie told a state trooper that Bradie's father, defendant Thomas Krueger, was the one who had molested her. The defendant was charged with first-degree criminal sexual conduct (sexual penetration of a child under 13)and attempted second-degree criminal sexual conduct (other sexual contact with a child under 13). At a preliminary examination attended by the defendant, Bradie became upset and stopped testifying when she was questioned about what she called "icky stuff." Bradie indicated that she was afraid to testify with her father in the courtroom, which the defendant denied. Judge Wiley adjourned the hearing and held a second hearing, at which Bradie testified in the judge's chamber without the defendant present, although his attorney attended and cross-examined Bradie. At trial, Judge Wiley ruled that, due to Bradie's age, the nature of the offense, and her unwillingness to testify in front of her father, the defendant would not be in the courtroom during Bradie's testimony. The defendant was able to view Bradie's testimony by video camera. After a two-day

trial, a jury found the defendant guilty of both charges. He was sentenced to concurrent terms of 18 to 80 years and 2 years to 5 years. In an unpublished decision, the Court of Appeals affirmed the defendant's conviction. The defendant appeals. He argues that the trial judge violated his constitutional right to confront witnesses and to be present at his trial. The defendant maintains that the trial judge improperly applied MCL 600.2163a, a Michigan statute governing protection of witnesses. Defendant also argues that the judge erred by allowing the state trooper to testify about what Bradie told her.

CRUZ v. STATE FARM

Attorneys for the plaintiff:	R. Kevin Thieme	(616) 451-8596
	Robert J. Riley	
Attorneys for the defendant:	James G. Gross	(313) 963-8200
	Mary T. Nemeth	

At issue: The plaintiff's auto insurance contract stated that he must submit to an examination under oath (EUO) in making an insurance claim. Should his claims for coverage be dismissed because he refused to submit to an EUO?

Background: The plaintiff, Peter Cruz Jr., was in an automobile accident with an uninsured driver and claimed he was seriously injured in the accident. Cruz had auto insurance through defendant State Farm. The policy provided uninsured motorist coverage and first-party coverage, which is required by law. The policy also included an "examination under oath" (EUO) provision. The provision stated that, in making an insurance claim, the insured person "shall answer questions under oath when asked by anyone [the insurance company] name[s], as often as we reasonably ask, and sign copies of the answers." After Cruz made his claim, State Farm repeatedly asked him to submit to an EUO. Cruz refused, arguing that Michigan's no-fault law did not require him to do so. He did provide releases for his employment and medical records, and he also attended the independent medical examinations State Farm requested. State Farm denied plaintiff's claims because he had refused to answer questions under oath. Cruz sued State Farm. Kent County Circuit Judge Paul J. Sullivan dismissed one count of Cruz's complaint, which sought uninsured motorist benefits. The judge ordered Cruz to submit to an EUO as a condition of proceeding with the second count, which was for first-party benefits. After Cruz refused to submit to the EUO, Judge Sullivan dismissed the second count. In an unpublished opinion, the Michigan Court of Appeals affirmed the trial judge's decision on the first count, but reversed as to the second count. The EUO provision in State Farm's insurance contract was contrary to the no-fault law, the Court of Appeals stated, because first-party accident insurance is required by Michigan's no-fault act, and because the no-fault law does not provide for EUOs. State Farm appeals.

PEOPLE v. SHEPARD

Prosecutor:	Ana L. Quiroz	(313) 224-5777
Attorney for defendant:	Phillip D. Comorski	(313) 961-9055

At issue: The neighbors who accused the defendant of stealing from them said nothing about the theft the first time police officers called at the scene, waiting ten hours before reporting the robbery to another set of officers. The trial judge refused to adjourn the trial so that the defendant's attorney could contact the first group of officers and call them as witnesses. Was the defendant denied the right to a fair trial?

Background: The defendant, Terry Rae Shepard, and his mother lived next door to an elderly neighbor and her mentally ill son. On August 23, 1994, at about 2:30 a.m., police responded to a 911 call made by the defendant's mother, who feared that the mentally ill son was bullying his mother for money, as he had done before. When the police arrived, the defendant claimed he was trying to collect a debt. The officers told the defendant that he would have to go to court to collect a debt and left. The neighbors said nothing about being robbed. Ten hours later, police were again summoned to the scene. This time, the neighbor and her son told police that the defendant had robbed them at about 3 a.m. that morning, taking the money just before the first police visit. The defendant was arrested and charged with unarmed robbery. At a preliminary hearing, the elderly neighbor was unable to identify the defendant as the man who took her money. The neighbor's son testified that he paid the defendant $6 for a "picture packet" and that the defendant threatened to beat him up if he did not come up with more money. The son also testified that, as police arrived on the scene, the defendant reached into his mother's dress pocket and took the money that she had there. By the time of trial, the elderly neighbor had died, and her son had problems recalling what had happened. When one of the officers who responded to the second call testified, the defendant's lawyer learned for the first time that officers were on the scene at the time the defendant was supposed to have robbed his neighbors. Recorder's Court Judge Maggie W. Drake denied the defense attorney's request to find out who those responding officers were. Ultimately, the defendant was convicted of unarmed robbery, following a bench trial. He was sentenced as a fourth felony offender to 8 to 20 years. In an unpublished opinion, the Court of Appeals affirmed. The defendant appeals. In part, he argues that he was denied effective assistance of counsel because the officers who were initially on the scene were never called to testify.

BYKER v. MANNES
Attorney for the plaintiff: Jon VanderPloeg (616) 774-8000
Attorney for the defendant: Michael S. Dantuma (616) 531-7100
At issue: Where the plaintiff and defendant shared a number of business ventures over several years, did their actions create a partnership between them?
Background: The plaintiff, David Byker, entered into a number of business enterprises with defendant Thomas Mannes. While they did not enter into a written contract, they agreed to split profits and losses from any enterprise that was developed on an equal basis. Byker claims there is a general agreement or "super partnership" underlying his business dealings with Mannes, while Mannes asserts that he merely invested in separate business adventures with Byker. Byker argues, among other things, that Mannes owes him for half of the money that Byker expended on one of their business ventures. The parties agree that the alleged "super partnership" has no formal name, no tax identification number, and no formal partnership agreement, and that it has never filed income tax returns. Kent County Circuit Judge H. David Soet found that the parties could create a partnership by their acts and conduct, without a formal agreement. He entered judgment in favor of Byker. The Court of Appeals, in an unpublished opinion, vacated Judge Soet's ruling and remanded the case, instructing the trial judge to dismiss Byker's claim. Byker appeals.

Tuesday, Dec. 4

ALLSTATE INSURANCE v. McCARN

Attorney for the plaintiff:	Joseph D. Collison	(989) 799-3033
Attorneys for the defendants:	Timothy J. Donovan	(517) 394-7500
	James L. Dalton	(517) 351-6200

At issue: While living with his grandparents, a 16-year-old shot and killed his friend in the grandparents' house. The teens were apparently playing with the gun and believed it was unloaded. Is the incident an "accident" under the grandparents homeowner's policy -- and is their insurance company obligated to defend them in a lawsuit brought by the dead teenager's estate?

Background: Robert McCarn, the 16-year-old grandson of Ernest and Patricia McCarn, was living with his grandparents when he shot his 16-year-old friend Kevin LaBelle. Robert and Kevin had been playing with Robert's gun, which they thought was unloaded. Nancy LaBelle, the dead teen's mother, brought a wrongful death lawsuit against Robert, Ernest and Patricia McCarn. The McCarns had a homeowners insurance policy with the plaintiff, Allstate Insurance. The policy provided coverage for "an occurrence" and defined occurrence in part as "an accident ... resulting in bodily injury or property damage." Allstate filed a lawsuit against the McCarns, seeking a declaratory judgment that it had no duty to defend Robert, Ernest or Patricia in the wrongful death action. Allstate argued that the shooting was not an "occurrence" covered by the policy. Shiawasee Circuit Court Judge Gerald D. Lostracco found that Allstate owed the McCarns a duty to defend and indemnify them in the wrongful death action. The Court of Appeals disagreed and reversed in an unpublished decision. Because Robert should have expected harmful consequences from pointing a gun at another person and pulling the trigger, the incident was not an "accident," the Court of Appeals stated. The McCarns appeal.

KOONTZ v. AMERITECH SERVICES, INC.

Attorney for the plaintiff:	David Davison	(517) 886-8305
Attorneys for the defendant:	Albert Calille	(313) 223-0964
	Richard G. Finch	(248) 433-1414

At issue: The plaintiff became eligible for a pension after Ameritech eliminated her position. Instead of a monthly pension, she opted for a lump-sum transfer to an IRA account. Later, the plaintiff applied for unemployment benefits. Should her unemployment benefits be reduced by the amount of the pension payments that she could have received?

Background: The plaintiff, Nancy Koontz, worked in Ameritech's Traverse City office from early 1965 until Ameritech closed that office on August 4, 1995. Instead of continuing employment at another Ameritech office, Koontz accepted a pension enhancement package that increased by three years her credits for both "age" and "years of service." Because of the additional years of service, Koontz could have begun immediately to draw a $1,052.95 per month pension. Instead, she opted to have the $185,711.55 present value of her pension entitlement transferred directly into an IRA account. Koontz filed for unemployment benefits. Ameritech argued that the Michigan Employment Security Act requires that any unemployment benefits the plaintiff receives should be reduced by the amount of pension payments that plaintiff would have been entitled to, if she had not chosen the lump-sum transfer instead. Ultimately, Grand Traverse

County Circuit Judge Philip E. Rodgers ruled that unemployment benefits should be reduced by the monthly pension amount. In a published opinion, the Court of Appeals reversed. Ameritech appeals.

PEOPLE v. REESE

Prosecutor: T. Lynn Hopkins (616) 336-3577
Attorney for the defendant: E. Erik Holt (616) 794-0990

At issue: The defendant was convicted of armed robbery; a judge refused to instruct the jury that they could find the defendant guilty of the lesser offense of unarmed robbery. Is a defendant in a criminal case automatically entitled to an instruction on lesser included offenses?

Background: A gas station was robbed by a man wearing a stocking cap over his face and carrying a knife. The station's video camera showed that the man had a knife. Two people working at the gas station identified the defendant, Clinton Wayne Reese, as the robber. When the defendant fled from the store, he was pursued, first by another witness, and then by police, who caught and arrested Reese. A knife, money, and items taken from the store were found outside the store. Reese was charged with armed robbery. Reese maintained that he himself had been robbed at knife point and that he had been wrongly identified as the robber. At trial, he asked for a jury instruction on the lesser offense of unarmed robbery. Kent County Circuit Judge Denis C. Kolenda denied the request. The jury found Reese guilty of armed robbery. As a fourth-time habitual offender, Reese was sentenced to life in prison. The Court of Appeals affirmed the conviction. Judge Kolenda erred by refusing to give the jury instruction, the appellate court stated. However, the judge's error was harmless because the evidence did not support the lesser offense, the Court of Appeals ruled. Reese appeals. He maintains that a jury should automatically be instructed on lesser included offenses. The prosecution argues that the jury should get the instruction only if the evidence supports the lesser offense. Reese also argues that the trial judge erred by sentencing him to life in prison, where the sentencing guidelines recommend four to 20 years for armed robbery. The prosecution responds that the life sentence was proper because of the defendant's prior offenses, which include eight felonies.

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